

California State Association of Counties



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September 10, 2008

Commissioner Ross Johnson, Chair, and
Commissioners Timothy A. Hodson, A. Eugene Huguenin, Jr.,
Robert Leidigh, and Ray Remy
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814-2329

Re: Proposed New Regulation: Title 2 Cal. Code Regs., § 18420.1
Agenda Item 8 (September 11, 2008)

Dear Chairman Johnson and Members of the Commission:

The California State Association of Counties (CSAC) joins the City of Salinas in objecting to the consideration of Agenda Item 8 on your September 11, 2008 agenda. We respectfully request that you defer discussing this issue until after such time as the California Supreme Court issues its decision in *Vargas v. City of Salinas* (S140911).

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC, together with the League of California Cities, filed an amicus curiae brief in the California Supreme Court in the *Vargas* case. CSAC believes the case presents a public policy issue of great importance to California voters and the local governments that represent them: can local governments fully inform their citizenry about the impact of a proposed ballot measure without risking litigation from those who disagree with the government's analysis? In today's political climate, where so much legislating is done at the ballot-box, this issue is more important now than ever.

In the *Vargas* case, CSAC has asked the Supreme Court to provide a clear, workable structure for local government on the issue of how to inform voters about pending ballot measures without being accused of using public funds for improper campaign purposes. Whatever the Court ultimately rules, the decision will certainly serve as the framework for local governments and this body in considering expenditures related to issues on the ballot.

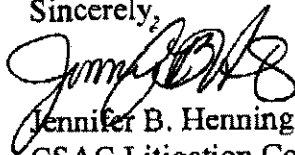
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That being the case, CSAC sees no reason for the Fair Political Practices Commission to undertake an effort to amend its regulations on this issue now. First, CSAC agrees with the City of Salinas that the basis for the proposal as described in the staff report is in error. Even if staff believes that the Sixth District Appellate Court decision was wrongly decided, it is no longer citable. And if the purpose is to avoid having the Supreme Court cite to section 18225 of Title 2 of the California Code of Regulations in support of the City of Salinas, this Commission is undoubtedly aware that the Court will not consider any future amendments to the regulatory code as part of this case.

Second, if the Commission believes changes in this area are necessary, it would surely want to consider the input of the California Supreme Court on the subject before moving forward. To do so before the case is decided will only cause the Commission to have to revisit these regulations again to ensure the new regulations are consistent with the Court's ruling. Such action wastes not only the resources of this Commission, but of local governments and other groups with an interest in this topic as well.

Therefore, CSAC concurs with the City of Salinas and respectfully urges that the Commission defer discussion of the regulations proposed in Agenda Item 8 until after the Supreme Court has issued its opinion in the *Vargas* case.

Sincerely,



Jennifer B. Henning
CSAC Litigation Coordinator